

HONG KONG / JUDGMENT

R. v. LAM KAP SHING

COURT

Court of Appeal

DECIDED

10 January 1996

CASE / FILE NUMBER

CACC199/1995

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bjbj 1995, No.199 (Criminal) IN THE COURT OF APPEAL BETWEEN THE QUEEN Respondent and LAM KAP SHING Applicant

Coram : Hon Yang, CJ, Bokhary JA and Bewley J in Court Date of hearing : 10th January 1996 Date of judgment : 10th January 1996

J U D G M E N T

Bewley J : (Giving the judgment of the Court) The applicant was convicted of living on the earnings of prostitution and was sentenced to 12 months imprisonment by Judge Bailey. He now applies for leave to appeal against conviction and sentence. He was one of six defendants charged with this and related offences. In December, 1993, the victim, Ma ching, worked at a Mongkok karaoke club. She became indebted to the club in the sum of \$30,000 and this debt was settled on her behalf by her friend Ah Chung. She was taken by Ah Chung to a restaurant and introduced to the 1st defendant. Ah Chung proposed that she work for the 1st defendant as a prostitute. The 1st defendant would reimburse Ah Chung from her earnings. The victim, Miss Ma, refused but Ah Chung insisted. She was then taken to a flat by the 1st defendant and was told that she would be credited with \$160 for each client. She was detained and told that she could leave only when the debt was paid off. At the flat were sleeping the six defendants, two of their girl friends and two other prostitutes. The 3rd defendant escorted the victim to various Mongkok villas, where she provided sexual services, for which payment was made to the 3rd defendant at the villas, either directly by the client, or via the victim. Sometimes she was escorted by the 5th defendant. On average she received 10 customers a day. On one occasion she saw the 3rd defendant hand money earned that day from prostitution to the applicant, who in turn handed it to the 1st defendant. There is no evidence that any of the money was used to pay off the debt to Ah Chung. On 8th January, 1994, the police raided the flat where the victim and the other girls were kept. The applicant and the other defendants were arrested. The applicant did not give evidence or call

witnesses. In his Reasons for Verdict, dated and delivered on 1st March, 1995, the date of the conviction, the judge stated in error that the victim was escorted to the villas on occasion by the applicant. He had confused the nicknames of the 5th defendant and the applicant. It was confirmed by notes taken by a Cantonese speaking pupil of counsel for the Crown that the victim had never been escorted by the applicant. In a supplement to his Reasons for Verdict, also dated 1st March and delivered later that morning, shortly after the error had been pointed out to him by counsel, he corrected his error. The judge accepted that this diluted the Crown case, but was satisfied that the evidence of the victim, whom he found to be a witness of truth, was nevertheless sufficient to convict the applicant. He relied on the applicant's receipt of prostitution money from the 3rd defendant and his handing of this money to the 1st defendant, plus the fact that the applicant was sleeping in the flat throughout the period the victim was detained. Mr Saw, for the Crown, concedes that this evidence was not sufficient to render the conviction safe and satisfactory. We agree. We grant the application and treat it as the hearing of the appeal. We allow the appeal and quash the conviction. (T.L. Yang) (K. Bokhary) (E. de B. Bewley) Chief Justice Justice of Appeal Judge of the High Court Mr D.G. Saw, DPCC, for Crown/ Respondent Mr Robert B. Buchanan, inst

- d. by M/s Chong, Leung & Co., for Applicant - PAGE - "@AB @\\SERVER\HP LaserJet 4 Plus (Copy 2) Ne00: winspool HP LaserJet 4 Plus \\SERVER\HP LaserJet 4 Plus (Co \\SERVER\HP LaserJet 4 Plus (Co & 6" 1995, No.199 Registrar, Supreme Court Normal.dot sslai Microsoft Word 8.0 1995, No.199 Title _PID_GUID Microsoft Word Document MSWordDoc Word.Document.8

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